

I will try to comment on the issues raised in this inquiry and raise some issues myself.

Response to the Community

In this part of the inquiry, the issue is raised on how stations can determine how well they are serving the community. This is an issue that I don't believe the Commission has ever had a regulatory method that would translate into an effective gauge that broadcasters could use. When I started in the industry, stations were required to ascertain the needs of the community by interviewing the leaders of their communities including heads of local government, civic, educational and other groups such as religious and labor leaders. I thought this was not a very effective method as many of these people had an agenda to push and those agendas may not have been the same as the general public. The elimination of those rules was a proper move by the FCC.

The rules no longer set any particular method of surveying the community and because every station and community is different, I believe the rules should remain as is. For some stations, they may wish to use marketing surveys or other listener surveys. Other stations, particularly in small markets, may need only to rely on informal methods such as listener letters, following what other news outlets are covering or tracking the agendas of local government meetings. Whatever methods that a station uses and the FCC requires, it should reflect the needs of the listener and good journalism and not be a method for interest groups to force their agenda on the station or the listener.

In the other part of the issue of community response, the FCC asks what programming should be considered community responsive programming. I think that any programming that the station produces locally could and should be considered as responsive to the local community. The Commission is so focused on news and public affairs that it may fail to recognize that other local programming is important also and can bring a community together. That Friday night high school football or basketball game may bring a community together as much or more than a discussion program on a school referendum. A station should be able to use programming that is produced by another station on some common issue to both and that programming should be considered to fulfill a part of a their local programming requirements. The public notice of this inquiry presented an example of this by describing one station producing a teenage drinking program used by another station. Finally, a stations public service effort such as sponsoring a community event or fundraiser should count as a method of meeting a stations public service obligation.

In my opening comments, I mentioned the difference between radio and TV as far as news programming is concerned. For the most part, I believe TV is doing a good job in news and public affairs. In the last ten to fifteen years, TV stations have increased there news programming. When I started in broadcasting, there was a half hour early evening newscast and a late half hour newscast after primetime ended on most stations with a few stations doing a noon newscast. Now, most ABC, CBS and NBC stations do a second half hour early evening newscast as well as an early morning newscast lasting from one

to two hours. Many FOX affiliates also do at least a half hour evening newscast with FOX stations in large markets doing as many hours of news as the stations from the other big networks. Most UPN and WB stations may not do news, but most independent stations, which these networks replaced, did not do news in the 1960's and 1970's either. Maybe some stations should be allowed to full fill their public service commitments in other ways.

Radio seems to have changed in the last few years the most. There are fewer stations doing news in any other time then morning drive time and the few morning newscasts seem to be three or four stories that may have come from the morning newspaper with the weather and a couple of sports scores. These newscasts last three or 4 minutes, sometimes less. Some morning shows may interview someone on occasion, but normally the programming consists of music with maybe some comedy bits by the disc jockey and very little other information.

Political Broadcasting

The Commission asks about changes in political broadcasting. We have just ended a political season, which makes it is hard completely sort things out at this time. Living in a battle ground state, it would seem that the current lowest rate rule for political ads does not seem to have an adverse effect on campaigning. With the new campaign laws, everyone seemed to be identified, so we knew who was responsible for the ads. Free time may help under funded challenger, as could public funding of campaigns, but free airtime would be difficult to regulate, particularly which candidates would be eligible. In many areas, there would be to many candidates to air any ad more then a few times, if that. There are still costs the broadcaster would have to absorb for free ads and they cannot give free airtime to all and pay their bills.

In the Madison, WI market that I live in, the main three TV news stations were giving congressional and state legislative candidates three to five minutes to present themselves in one of their daily newscasts. Many stations around the country carry debates by their candidates for U.S Congress and Governor. It is not an easy task to cover issues in an election, but many more stations are trying to make the effort to cover more then the horse races.

Disaster Warnings

This is an issue that is being covered in another action that the Commission is seeking comments on. The FCC is seeking comment on the EAS system and any issues concerning disaster warnings should be dealt in that proceeding.

The only comment I will make in my comments is that most stations seem to do a reasonable job with storm warnings and Amber Alerts. The only problem I have with storm warnings is with stations that are unattended. These stations only air a warning from the EAS system as it comes in without the repeating or updating that a live

announcer would be able to do. And that may not happen depending on how the automatic alert function of the EAS decoder is set.

Payola and Sponsorship Identification, Voice-Tracking and National Play lists

There are three issues in this section; the first is payment for airing something such as a music recording or an appearance of some spokesperson. The rules seem clear that any time you air something for payment, it has to be identified. If there are any loopholes in the current rules, they need to be closed. As a viewer, it seems that program length commercials are being identified as well as political advertising and most regular commercials are produced in a matter that most listeners and viewers know what they are. The issue is still with music and some appearances where money exchanges hands. The Commission seems to need to look at that at regular intervals in order to police it. Someone will always find a way around the rules to get the edge in any competitive market.

Voice-Tracking is a new issue and has been created because of the advances of computer technology as a playback device for recordings. First, voice-tracking in some ways is like the old automation tapes on early automation equipment. Those tapes came with back announcements included on the music tapes. The automation system then added commercials and other elements such as weather forecasts and time and temperature announcements as the system controller required. Automation has been around since the early sixties in a fashion similar to voice-tracking and started in the early FM days when someone hooked a record changer to the FM transmitter to cut operating costs. The big difference is that in the early FM days, there was normally an announcer in a companion AM station that could add a live announcement if the situation required it. Now there are operations with up to 8 stations under one roof and not a live announcer on any of them during some hours of the day or night. Considering the investment involved, any one operating that number of stations without anyone in control, speaks poorly of their respect for the safety and operation of their business. There should be some requirement that stations housing large multiple operations be required to have a live announcer on duty at one of the stations or some other method of getting someone on the air in a short time in an emergency. There is no way to outlaw automation, but stations should do it responsibly. In many markets, most of the transmitters are not being feed with live programming in late evening and overnight. This should be considered a public safety issue when it is possible for no station in a market to react to an emergency.

The final issue is national play lists. This may be something that may not be able to be regulated. In the 1980's, I worked at radio station that got its play list and music logs from a consultant in a major market. The difference between a consultant and a national programmer for the chain of stations is very little other than you can fire the consultant. These national play lists did change the dynamics of record releases, as did consultants in the past. At one time, records were promoted and played in smaller markets first and if they were successful, they made their way to larger market stations. This happens less often now and it probably has an effect on new music. Hopefully, some of the student collage stations and the few locally programmed stations left can remain competitive

enough to influence both new music and changes in the way some group stations are programmed. Competition from satellite radio may be the best force to change music programming with the large number of different music channels. I think the market place and not regulation has to force any change in music and other types of programming as well as the survival needs of the broadcaster in this highly competitive marketplace of satellite radio, MP-3s, CD's and other recorded music sources.

License Renewal

The rules concerning license renewals that are in effect at this time are correct and realistic. With the investment involved in a broadcast facility, one should not have to go through a process of competing with other groups for their license at renewal time. Others should only be able to apply for a license only if it has been revoked. But, a license should be held to a known standard of conduct and the FCC should entertain any information from others about the station maintaining the required conduct at renewal. In many ways, a license to broadcast is like holding a franchise in business. If, you don't abide by the contract with the parent franchise company, you loose the right to sell the product. The FCC should consider license renewal the same way. In the same way as a franchiser does with training to the franchisee, the FCC should be of aid to the licensee in meeting its public service requirements with information on the FCC website, mailings to stations and other training through trade groups and seminars. Increased enforcement by audits and other methods should be reserved for known bad operations. Whatever standard is used, that standard must to clear, simple and enforced. Public file and renewal standards can be confusing and can cost stations money in fines and possibly their license. Disruption of service to the public due to contested renewals and loss of a license could be as bad as a station that does not meet or barely meets its obligations. Both license renewals and the possible revocation of a license needs to be considered as serious actions and should never be taken lightly and done sparingly.

Additional Spectrum Allocations

This is the section that may be of the most importance. The licensing of new stations may have the most impact on increasing localism. The Commission and Congress can refrain from any more changes in the ownership rules, but for the most part, the damage already done to local broadcasting by increased ownership and consolidation would be difficult to undo. In most cases, new stations would be placed in mainly small communities where local service may be needed the most or be of the low power nature in both TV and FM.

Many of the problems with localism in broadcasting came from what I believe were the unintended results of rule changes. In the mid 1980's, the FCC started to loosen up the studio rules to allow greater freedom in locating the studios. This was helpful for stations in large metropolitan communities with attached suburbs. Studios for suburban stations could locate in the central city and stations licensed in the central city could move to the suburbs and it would not have been a big deal as in many cases except for a sign denoting the community limits, one would not know they had left one community for another and

for the most part they were one population center. Then came the de facto reallocations where stations moved their transmitters toward a larger city, just keeping enough signal over their city of license to comply with the rules. Next, they moved the studio to the larger city that may be twenty, thirty or forty miles away depending on the class of station. In effect, the smaller city lost its local service and the channel was reallocated in everyway, but the notation on the license listing the city of license.

The next rule change was the reduction of the FM signal overlap for commonly owned stations from one millivolt to 3.16 millivolt. This allowed for one owner to acquire more stations in an area, which lead to further changes in the studio rules where commonly owned stations in large area could combine studios. That allowed some studios to be located far enough away to have problems picking up the signal from the transmitter.

The Advisory Committee on Diversity for Communications in the Digital Age report on FM ownership proposed that FM allocations should be changed to a market based allocation system. A station would be allocated to a market with the transmitter placed where it would meet separation requirements and the cover needs of the owner. The owner could pick the city of license. This may be a better method than the current system of games played with allocations to a small community when it is actual a larger community were the studio is located and service is provided.

These actions are also difficult to repeal, so the Commission may be left with grant new stations as the only way to increase local involvement of broadcasters. New stations, which are normally started by small businesspersons, as was the case of the UHF boom of the 1970's and 1980's and the 80-90 FM allocations. But there are some problems with the current licensing system that need to be corrected. These issues are who is eligible for low-power FM stations, the use of FM translators and low-power TV and the general allocation and application process of both FM and TV.

The first issue is LPFM. The current rules require that LPFM licenses can only be applied for by non-profit groups and those groups have had to exist for two years. I would like to see the rules changed to allow for a non-profit group to be formed for the sole purpose of applying and operating a LPFM stations. This may allow for more community-based station to be created. The bulk of the new LPFM applications seem to have been for religious groups. While the have the right to apply and operate LPFM stations, it would have been nice for more school systems, local governments in conjunction with cable access stations and other groups like youth groups and music societies to apply. This could help provide more diversity to the airwaves. It may be nice to have a volunteer jazz, classical or ethnic music station in an area were one does not exist now.

The second issue is FM translators and to some extent LPTV stations. There are currently groups that are filing for hundreds and sometimes thousands of FM translators. This is because of what I consider a loophole in the translator rules as the result of the unintended results of a rule change, The FCC allowed non-commercial FM and all TV translators to be feed by microwave, fiber or satellite. Non-commercial religious

broadcasters started to place FM translators all over the U.S. I believe the intent of the rules was to allow statewide educational networks to serve areas obstructed by mountains and other terrain. I would like to see FM translators limited to the state that a statewide network is located in. In the case of any other government education group, the limit would be the district that they serve. All other FM translators should be limited to either a fixed radius from the transmitter with the distance based on the class of stations or a signal contour such as a tenth of a millivolt. The distance should be greater than the one-millivolt contour for class A and C commercial stations and the .5-millivolt contour of Class B commercial stations. I would also like to see the contour for commercial stations increase. The only thing the current limit does is to protect stations from competition, often in areas with few stations. Also the point five and one millivolt protected contours do not represent the usable signal to most receivers. The .25 millivolt is more like the usable signal for cheap receivers and the .1 millivolt or less is the limit for car and home stereos. Stations should be able to reach some of the problem areas in those contours.

With LPTV and TV translators, I know stations in the West need to reach vast areas beyond their grade B contours due to the lack of stations and population. But in the more populated areas, the Commission should by its rules encourage local origination on LPTV stations in the more densely populated East and South. Once, the final allocations are made for full power DTV stations, I believe that with the noise free digital signals, low-power DTV will be able to provide a good local service to many communities without local service and diversity to larger cities.

The final allocation issue was discussed in the Advisory Committee on Diversity for Communications in the Digital Age report on FM ownership. That issue is the two-step process of a rulemaking to allocate a FM or TV channel and then the application process. This process may please those in favor of auctions by creating mutually exclusive applications, but it is grossly unfair to the person petitioning for the allocation. He pays to have the study done and to petition the Commission and then has to compete with others to use his work. I don't know of any other situation in business like that. I propose a first-come first serve one-step method. The applicant for a new FM or TV station would file for the proposed allocation with the application for the license. Because applications are electronically filed, there would be a time stamp that would determine who applied first. If the next application came in five minutes later, they would be out of luck. The application would still be open to a period for objections and another group could file for that frequency if they could find an alternate frequency for the first applicant. The application would also be subject to any other objection that someone may wish to make. The FCC would then first process the proposed allocation and then the application, if the allocation is good. As the comparative selection system proved, there are few unqualified applicants and this system would still weed out the unqualified applicants as well as the auction system does. As far as losing auction dollars, the FCC could charge an upfront fee much like they do now for setting minimum bids.

The diversity group proposed something different with the FCC doing a mass frequency search of the country and an auction, but that still does not solve the non-commercial application issue with non-reserved channels. My plan would solve that

because if a non-commercial group applied first and was qualified, they would get the license. I believe this system would be fairer than a lottery, auction or comparative hearing.

Summary

I believe that the Commission needs to recognize those who provide good service to their communities and provide incentives for those that are doing the minimum. Strong-arm regulatory tactics will no longer work. Many broadcasters are so large, that they could keep any action by the FCC in the Courts for years. With increased competition, broadcasters should be realizing they are the only media that can provide the local connection with all of the public. The market place can provide many of the incentives need for increased local service, but it cannot provide all of the incentives, the FCC must provide some regulatory help.

I don't believe that localism in broadcasting is dead nor do I think broadcasting is doomed. But, broadcasters have to look to some of the things that they did in the past to connect with the listener or viewer, and the FCC has to take into account the possible unintended results of their actions. The changes in the studio and various ownership rules have done a lot of damage and they would be impossible to undo. But the old 7-7-7 rule is also out of date and no one would want to go back to it and some of the other nit-picky rules. But deregulation has its limits and those limits have been exceeded at times causing many unintended results.

I hope you also consider the report on FM broadcasting by Advisory Committee on Diversity for Communications in the Digital Age. They have some good ideas and some that I don't necessarily agree with, but do provide for the start of a good discussion on both local and minority broadcasting. I also hope that I have brought some different angles to the discussion on local broadcasting.

Respectfully Submitted
November 1, 2004

Thomas C. Smith
1310 Vandenburg Street
Sun Prairie, WI 53590-1077